IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3087 of 2007()

LP.95/2000 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE
CRIME NO. 56/1994 OF ELATHUR POLICE STATION

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PETITIONER: ACCUSED 1 & 2

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1. SAJID, AGED 31 YEARS, S/O. ALI,
RESIDING AT ATHIMANNIL HOUSE, EDAKKARA P.O.,
MALAPPURAM.

2. ABDUL RASHEED, AGED 32 YEARS,
S/O. MOHAMMED, PARAMBAN HOUSE, VAZHIKKADAVU,
VIA-NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. M.S. BREEZE, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 3087 Of 2007

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Dated this the 9th day of October, 2007

ORDER

The petitioners face indictment in a prosecution for offences punishable, inter alia, under section 452 IPC. The petitioners were arrayed as accused Nos. 1 and 2. The co-accused who faced trial, was found not guilty and acquitted. The petitioners were not available for trial. The case against the petitioner was split up. The same has been transferred to the list of long pending cases. The learned Magistrate has issued coercive processes against the petitioners. The case has been transferred to the list of long pending cases. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The absence of the petitioners earlier was not wilful or deliberate. The petitioners are willing to surrender before the learned Magistrate and seek bail. But they apprehend that their applications for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 482 Cr.P.C, prays the learned counsel for the petitioner.

2. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned

Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

3. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

4. The learned counsel for the petitioners further submits that the matter has been settled between the parties and the victims have compounded the offences alleged. It is for the petitioners to report such settlement/composition before the learned Magistrate. The learned Magistrate must certainly consider whether such composition can be accepted. The learned Magistrate, needless to say must consider whether charges are liable to be framed for offences which is not compoundable at the stage of Section 239/240 Cr.P.C.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE